MULTIMEDIA UNIVERSITY

STUDENT IDENTIFICATION NO

MULTIMEDIA UNIVERSITY

FINAL EXAMINATION

TRIMESTER 2, 2022/2023

UNL1622 – CONTRACT LAW II

(All Sections/Groups)

13th July 2023
Reading Time : 9:00 a.m. – 9:15 a.m.
(15 Minutes)
Answering Time : 9.15 a.m. – 12.15 p.m.
(3 Hours)

INSTRUCTIONS TO STUDENTS

1. Students will have **fifteen minutes** during which they read the paper and make rough notes ONLY on their question paper. Students then have the remaining **THREE HOURS** in which to answer the questions.

2. This Question paper consists of 4 Pages and 4 Questions only.

3. This Question paper consists of 2 sections. Attempt **ONE** question only in **Section A** and all **THREE** questions in **Section B**. All questions carry equal marks and the distribution of the marks for each question is given.

4. Students are allowed to bring into the examination hall CLEAN and ORIGINAL copy of:
   i. **Contracts Act 1950 (Act 136)**
   i. **Specific Relief Act 1950 (Act 137)**
   ii. **Civil Law Act 1956 (Act 67)**

   "Clean" is defined to include no tagging, no annotation either by the publisher or anyone else, and no erased marking. Highlighting and underlining are also prohibited.

5. Please write all your answers in the Answer Booklet provided.

SECTION A: Answer either Question 1(a) or 1 (b)

QUESTION 1(a)

(i) The case of *O'Sullivan v Management Agency and Music Co Ltd [1985] QB 428* has laid down the principle that the effect of agreement entered under the pretence of undue influence is voidable. Explain the Malaysian position.

(15 marks)

(ii) Illustrate the different position between Malaysia and Common Law on the types of misrepresentation. Your answer should be supported with reference to decided cases and Contracts Act 1950.

(10 marks)
(Total: 25 Marks)

Or

QUESTION 1(b)

Discuss the following with reference to the Common Law and Malaysia position:
i. What are the circumstances in which a contract is discharged by frustration? What is the general effect of the doctrine of frustration?

(15 marks)

ii.In the case of *Goh Yew Chew & Anor v Soh Kian Tee [1970] 1 MLJ 138*, LP Azmi quoted;

"The doctrine of frustration is relevant only when there is a change of circumstances after the formation of the contract which renders it physically or commercially impossible to fulfil."

Give the example of the types of frustrating events with reference to decided cases.

(10 marks)
(Total: 25 marks)

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SECTION B: Answer All Questions

QUESTION 2

In the case of *Holiday Inns Inc & Anor v Hotel Enterprises Ltd* [1976] 1 MLJ 213, the Chua J, *inter* alia, said:

> "I am satisfied, having regard to the nature and scope of the management agreement and on the affidavit evidence before me that damages would be an inadequate remedy and that the balance of convenience is clearly in favour of the plaintiffs. In my view no injustice would be suffered by the defendant if the interim injunction is granted."

The general rule is that an injunction will be refused if it would force the defendant to perform acts that could not form the basis of a decree of specific performance. Discuss.

(Total:25 marks)

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QUESTION 3

Kencana Construction Sdn Bhd ("the KCSB") entered into an agreement with Datuk Akhmal dated 3 January 2020. KCSB agreed to build and deliver the commercial unit ('the property') within 36 months from the date of the agreement in consideration of Datuk Akhmal paying KCSB the purchase price of RM1,298,860.10 in instalments according to the schedules as set out in Appendix 3 of the said agreement.

According to clause 23(a) of the agreement, the defendant is required to deliver the property to the plaintiffs on or before 2 January 2023. Unfortunately, the defendant did not complete the construction of the said property.

> 23 COMPLETION AND HANDING OVER OF VACANT POSSESSION
> (a) The property shall be completed by the Vendor and vacant possession shall be handed over to the Purchaser within thirty-six (36) calendar months from the date of this agreement.

Clause 7.14 in the Sales and Purchase Agreement ("SPA") provides that time wherever mentioned in this agreement shall be of the essence of this contract.

On December 2022, Datuk Akhmal visited the site of the construction and was not satisfied with the work done for the building. It did not follow the specification agreed in the said agreement. Datuk Akhmal requested KCSB to do extra work and to fulfil the terms and condition of the said agreement. On 2 January 2023, KCSB failed to deliver the vacant possession, and claimed that the delay was due to the additional work requested by Datuk Akhmal.

Datuk Akhmal refused to pay the balance of the purchase price and requested the KCSB to complete the construction of the building. KCSB declined to complete the construction of the building and refused to deliver the vacant possession respectively. KCSB wants to claim the balance purchase price, including the additional work done requested by Datuk Akhmal.

Advise both KCSB and Datuk Akhmal on the available actions and remedies.

(Total: 25 marks)

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QUESTION 4

Khairy executed an agreement with Jason dated 1 April 2022 for the sale of three pieces of land ('the lands") held under in the Mukim and District of Gombak. Jason had issued an option for the sale of the land provided that the amount of deposit will be 20% of the purchased price of the sale land. A deposit of RM400,000 was made, leaving a balance of RM1 600,000 to be paid on the date of completion. One of the clauses in the agreement stated that Jason was to deposit his documents of title with Khairy's solicitors upon the execution of the agreement. However, only two titles of the lands are in the possession of Jason and the other title was lost. The application for a new title had been made. Therefore, only two documents of the title were deposited with Khairy's solicitor. Jason gave an assurance that he would try his best to get the new title by the date of completion.

Further, the balance of the purchase price was to be deposited with the Jason's solicitors on or before the 31 July 2022. Upon such deposit being made, Jason was to execute a valid and registrable transfer and deliver vacant possession of the lands to the Khairy. The balance of the purchase price was to be deposited with the Jason's solicitors was to be released to Jason upon registration of the transfer. There was a stipulation in the contract that time wherever mentioned shall be the essence of the contract. The agreement contained the usual clause as regards to the forfeiture of the initial deposit in the event of the Khairy's failure to deposit the balance of the purchase price with Jason's solicitors.

Khairy decided to enter into an agreement with Isabella on 20 July 2022 to sell the three lands although he has not received the vacant possession of the three lands from Jason. Khairy has received a deposit of RM1 000,000 from Isabella.

On 29 July 2022, Jason did not have all three titles of the lands and was not in the position to give vacant possession to Khairy on 31 July 2022. Jason's solicitor requested an extension. However, Khairy did not agree to the request of extension of time. Khairy intends to repudiate the agreement with Jason and claim for damages for the recovery of the deposit. At the same time, Khairy's solicitor has paid the sum of RM1 600,000 to Jason's solicitor.

Advise Khairy and Jason as to what damages to plead, if any, on the claims for breach of contract.

(Total: 25 marks)

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